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No. 91

In the Supreme Court of the United States

OCTOBER TERM, 1960

UNITED STATES OF AMERICA, APPELLANT

v.

ROY FRUEHAUF, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

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A loan of money by an employer to a representative of his employees is prohibited by Section 302 of the Labor-Management Relations Act, 1947, which made it unlawful for an employer to pay or deliver to a representative of his employees, or for such representative to receive or accept from the employer, any money or other thing of value	12
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OPINION BELOW

The oral ruling (R. 46) of the district court dismissing the indictment has not been reported.

JURISDICTION

On February 18, 1960, the district court dismissed the indictment on the ground that it did not charge an offense under Section 302 of the Labor-Management Relations Act, 1947, 61 Stat. 157 (R. 44–46). A notice of appeal to this Court was filed in the district court on March 18, 1960 (R. 47–48), and this Court noted probable jurisdiction on October 10, 1960 (R. 50). The jurisdiction of this Court to review on di-

rect appeal the decision of the district court dismissing the indictment, on the ground that it did not charge a crime within the meaning of the statute upon which it was founded, is conferred by 18 U.S.C. 3731.

QUESTION PRESENTED

Section 302 of the Labor-Management Relations Act, 1947, made it unlawful for an employer to "pay or deliver" to a representative of any of his employees (in an industry affecting interstate commerce), or for such representative to "receive or accept" from the employer, "any money or other thing of value." The question presented is whether a loan of money comes within the foregoing prohibitions.

STATUTES INVOLVED

Section 302 of the Labor-Management Relations Act, 1947, 61 Stat. 157, 29 U.S.C. 186, provided, in part, as follows:

> (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> (b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

* * * * *

On September 14, 1959, Section 505 of the Labor-Management Reporting and Disclosure Act of 1959,

73 Stat. 537, amended Section 302, *supra*, to read in part, as follows:

> (a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—
>
> (1) to any representative of any of his employees who are employed in an industry affecting commerce * * *.
>
> * * * * * *
>
> (b)(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a).
>
> * * * * * *

STATEMENT

Section 302 (a) and (b) of the Labor-Management Relations Act, 1947, *supra*, made it an offense for an employer to "pay or deliver" to a representative of his employees engaged in an industry affecting interstate commerce, and for such representative to "receive or accept" from the employer, "any money or other thing of value." A two-count indictment filed on June 17, 1959, in the United States District Court for the Southern District of New York charged five defendant employers[1] with having paid and delivered

[1] The employers were Roy Freuhauf, the Freuhauf Trailer Co., Burge Seymour, Associated Transport, Inc., and the Brown Equipment and Manufacturing Co.

money in the amount of $200,000 to a representative of their employees (R. 5; count 1), and charged the defendant representative (Dave Beck) with having received the money (R. 6; count 2), in violation of Section 302 (a) and (b), respectively. In a pre-trial memorandum, the government stated that it intended to prove that the defendant employers had loaned $200,000, unsecured and at an actual interest rate of about 2%, to the defendant representative through an intricate exchange of checks; and that the loan was subsequently repaid by the representative (R. 10–14).

All the defendants orally moved to dismiss (R. 15, 28–29, 31, 33). After argument, the district court dismissed the indictment on the ground that Section 302, as it stood at the time of the offenses charged, did not cover loans of money. The court emphasized the fact that Section 505 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 537, *supra*, amended Section 302 of the 1947 Act to include specifically a prohibition upon loans (R. 45–46). The court stated (*ibid*):

> * * * Having found as I do on the Government's judicial admission that the transaction was a loan, we must then resolve whether the transaction as a loan was violative of the statute as it was at the time of the transaction, and I am of the opinion that it was not. I reject the argument that the subsequent action and the legislative history upon which that action was predicated by the Congress in 1959 in injecting into the statute the specific words dealing with a loan were intended to broaden that

> which I take it the Government urges was manifest before. I am, therefore, of the opinion that * * * the [loan] transaction was not an offense contemplated by the statute as it existed at the time.
>
> * * * * *
>
> I am now granting the motion of all defendants to dismiss the indictment upon the ground that it fails to charge an offense of the statute as it read at the time the transaction occurred.

SUMMARY OF ARGUMENT

The district court's conclusion—that Section 302 of the Labor-Management Relations Act, 1947, does not prohibit a loan transaction between an employer and the representative of his employees—is not supported by the language, legislative history, or purpose of the statute. We show that the literal language of the statute is broad enough to forbid any monetary exchange not expressly authorized, that Congress intended this broad coverage, and that the later amendment of Section 302 (in 1959) merely made explicit what already had been outlawed. We also point out that Section 302 is sufficiently definite and certain to justify the imposition of a criminal sanction for a loan of money.

A. Section 302 made it unlawful for an employer "to pay or deliver * * * any money or other thing of value" to a representative of his employees, and prohibited the receipt or acceptance thereof by the representative. The normal, ordinary, spontaneous meaning of the words "deliver" and

"receive" is broad enough to include loans of money, since the subject of the loan is both "deliver[ed]" and "receive[d]". That plain meaning should be followed unless the rest of the statute, its purpose, or its history directs otherwise.

This Court has already ascribed their literal meaning to other terms used in Section 302. Thus, the term "any representative of any employees" has been held to include individuals who represent employees in their relations with employers, whether or not the individual is the formal bargaining representative, *United States* v. *Ryan*, 350 U.S. 299; and a literal meaning has been ascribed to Section 302 (c)(5), dealing with welfare funds, *Arroyo* v. *United States*, 359 U.S. 419.

B. 1. The declared purpose of the Labor-Management Relations Act, 1947, is to protect interstate commerce by recognizing and securing the legitimate rights of employees, employers, and representatives in their relations with each other. One way in which Congress sought to reach that goal was by outlawing all unauthorized payments between employers and representatives, to insure that they would deal at arms length. A loan—particularly the loan of a large sum of money at a very low rate of interest (as in this case)—obviously can be just as effective a device for improperly influencing a union official as an unconditional gift, which is clearly forbidden by Section 302. It tends to engender the very same emotion—gratitude—in the representative; tends to have the same effect—a blurring of the representa-

tive's sense of fidelity to the employees—on the bargaining process; and tends to lead to the same evil result—a contract which is not based on good faith arms length collective bargaining. The broad language of Section 302 was intended to, and did, cover any delivery or receipt that might cause such an abuse. A loan is just as likely to do so as an outright gift.

2. The structure of Section 302 also points toward this construction. Subsections (a) and (b) set forth the broad prohibitions. The exceptions to these prohibitions are set forth in subsection (c). These exemptions are carefully defined, extremely detailed, and very narrow. They show that Congress knew how to draft exceptions to the broad prohibitions of Section 302, that it carefully considered the exceptions it wished to make, and that it enacted only those few exceptions which it deemed desirable. A loan is not one of the exemptions specifically enacted by Congress.

C. 1. The legislative history of Section 302 shows that Congress intended to prohibit all financial dealings and all exchanges of money between employers and representatives except those expressly authorized. Section 302 had its origin in a floor amendment by Senator Byrd to the Case Bill (H.R. 4908, 79th Cong., 2d Sess.). Prior to that time, the only statutory prohibition against financial dealings between employers and representatives was one which made it an unfair labor practice for an employer to contribute financial support to a labor organization. The Byrd proposal would have made it unlawful for any employer to pay,

or any representative to receive money unless the payment was for services as an employee or was for union dues withheld by an employer under a "check-off" agreement. It was quickly pointed out by opponents of the amendment that the language was so broad as to forbid all other transactions involving money or valuables, many of which were otherwise innocent transactions. Advocates of the amendment replied that that was precisely what they intended to accomplish. After extensive debate, during which other limited exceptions were added to the proposal, the amendment was adopted by the Senate and accepted by the House. The President, however, vetoed the Case Bill, which failed to pass over the veto.

2. H.R. 3020, Congressman Hartley's bill in the 80th Congress, 1st Session, as passed by the House, did not contain a provision similar to Section 302. Instead, it continued the "unfair labor practice" treatment of the earlier law. The Senate Committee on Labor and Public Welfare held hearings on H.R. 3020 and various other bills, one of which (S. 55, 80th Cong., 1st Sess.) contained a section which was essentially the Byrd amendment of the previous year (*id.*, Section 201). During the hearings held on these bills, the committee discussed the breadth of the language used in the proposed prohibition, and the sponsors of S. 55 made it clear that they had deliberately chosen that sweeping prohibitory language.

The Senate committee reported an original bill which did not contain any provision similar to the Byrd amendment of the prior year. A minority of the committee criticized the reported bill on this ground, stating that they would introduce an amendment, from the floor, to prohibit all unauthorized financial transactions between employers and representatives. The Senate again adopted this floor amendment in the face of warnings that the language prohibited every form of financial transaction which was not expressly authorized. Ultimately, this amendment became law as Section 302.

Congress therefore knew, when it adopted Section 302, that the section would prohibit every unauthorized financial exchange between employers and representatives, including many which would be innocent were it not for the positions occupied by the employer and the representative. Knowing this, Congress nevertheless adopted the broad prohibition, because it deemed such transactions to be an evil when they took place in an employer-representative context.

D. 1. Congress was concerned with a totally different problem in 1959 when it amended Section 302. It was primarily concerned with extending the prohibitions of Section 302 to "middlemen"—those persons who made payments to representatives on behalf of employers, even though not technically agents of the employers. There is nothing to indicate that, in add-

ing the words "lend" and "loan" to Section 302, the Senate believed it was expanding the statute to reach payments of a kind not previously covered. The Senate committee report (No. 187, 86th Cong., 1st Sess.) which accompanied the amendment made no express reference to the addition of the word "lend", although the report did discuss the other amendments at some length. Furthermore, this report noted that Section 302, as it then read, already contained a flat prohibition against unauthorized deliveries and receipts of money or other things of value. Thus, there is no reason to infer that the addition in 1959 of the words "lend" and "loan" served any other purpose than to make explicit what was already forbidden by Section 302, as enacted in 1947.

2. The district court in its order, and appellees in their motions to affirm, have relied on other materials in the legislative history of the amendment to Section 302 which were believed to point to the construction that the 1959 amendment enlarged Section 302. The loan which lies at the root of this prosecution was (in 1957) the subject of hearings before the Senate Select Committee on Improper Activities in the Labor or Management Field. Senator Kennedy at the time indicated in general terms that there might not be any law forbidding this exchange of money, but the committee in its interim report did not comment on that matter; instead, the committee confined itself to the "management middlemen" problem. Appellees also rely upon a statement by Senator Goldwater to the effect that the

legislative proposal to amend Section 302 would *add* a prohibition against loans. This can hardly be taken as an expression of the opinion of the Senate or the Senate committee, however, since Senator Goldwater opposed the reporting of the bill and was the only Senator to vote against its passage.

3. Even if it is assumed that in 1959 Congress clearly indicated that it believed that Section 302 as enacted in 1947 was not sufficiently broad to forbid loans, that later expression, as this Court has held, cannot be said to alter the meaning of the 1947 Act. This rule is particularly sound here, in view of the legislative materials relied upon by the district court and appellees in this case which relate to the supposed position of one member of Congress who was not a sponsor of the 1947 Act and of another who was not a member of Congress at that time.

E. In their motions to affirm, appellees offered an alternative contention that the 1947 version of Section 302 is too vague to be read as prohibiting a loan transaction. While the legislative draftsmen might have chosen to use a number of words of specific content, rather than broad inclusive words like "pay", "deliver", and "receive", a statute does not become invalid because more specific phraseology is possible. The language of Section 302 gives fair notice, in well-understood terms, that no delivery or receipt of money or other thing of value is permitted unless specifically exempted from the operation of the statute. The standard of certainty requires no more than this.

ARGUMENT

A LOAN OF MONEY BY AN EMPLOYER TO A REPRESENTATIVE OF HIS EMPLOYEES IS PROHIBITED BY SECTION 302 OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, WHICH MADE IT UNLAWFUL FOR AN EMPLOYER TO PAY OR DELIVER TO A REPRESENTATIVE OF HIS EMPLOYEES, OR FOR SUCH REPRESENTATIVE TO RECEIVE OR ACCEPT FROM THE EMPLOYER, ANY MONEY OR OTHER THING OF VALUE

The district court's conclusion—that Section 302 of the Labor-Management Relations Act, 1947, 61 Stat. 157, 29 U.S.C. 186, did not prohibit a loan transaction between an employer and a representative of any of his employees in an industry affecting interstate commerce—is not supported by the language, legislative history, or purpose of the statute. We show that the literal language of the statute is sufficiently broad to forbid any monetary exchange save those expressly authorized, that Congress intended this broad coverage, and that the amendment in this respect of Section 302 by Section 505 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 537, merely made explicit what already had been outlawed. We also point out that there is no sound basis for any contention that Section 302 is too vague to justify the imposition of a criminal sanction for a loan of money.

A. *The language used by Congress, when taken in its usual sense, covers a loan of money.*

In this, as in all cases which turn on the meaning of a word, resort must first be had to the language of the statute in which it is used. Cf. *Adams Express*

Company v. *Kentucky*, 238 U.S. 190, 199; *Federal Trade Commission* v. *Bunte Brothers*, 312 U.S. 349, 351. As enacted in 1947, Section 302 made it unlawful for an employer "to pay or deliver * * * any money or other thing of value" to a representative of his employees, and prohibited the receipt or acceptance thereof by the representative. According to the dictionary, "deliver" means "to give or transfer" something; "receive" means "to take, as something that is offered"; "lend" means to allow the use of something, on the condition that it be returned. Webster's *New International Dictionary* (2d ed., 1958, Unabridged), pp. 693, 1415, 2076. Every loan contemplates a transfer, delivery, or acceptance of something having specific identity (even though temporary), although of course not all deliveries, acceptances, or transfers are loans. The words "deliver" and "receive" are thus broader than the term "lend" in ordinary meaning. When an employer makes a loan to a representative, he "pay[s] or deliver[s] * * * money" to the representative, and the latter "receive[s] or accept[s]" the money from the employer. The normal, ordinary, spontaneous meaning of "deliver" and "receive" includes loans. That meaning should be followed unless the rest of the statute, its purpose, or its history directs otherwise. "'[T]here is no canon [of construction] against using common sense in construing laws as saying what they obviously mean'". *Arroyo* v. *United States*, 359 U.S. 419, 424, quoting from *Roschen* v. *Ward*, 279 U.S. 337, 339; see *Addison* v. *Holly Hill Co.*, 322 U.S. 607, 617-618; *Jones* v. *Liberty Glass*

Co., 332 U.S. 524, 531; *National Labor Relations Board* v. *Highland Park Co.*, 341 U.S. 322, 324–325. Quite the contrary, "[w]e should not read out [of a criminal statute] what as a matter of ordinary English speech is in." *United States* v. *Hood*, 343 U.S. 148, 151.

This Court has already ascribed their literal meaning to other terms used in Section 302. In *United States* v. *Ryan*, 350 U.S. 299, the Court noted that the literal meaning of the phrase "any representative of any employees" strongly suggested that the phrase included a person who represented employees as a union president and principal negotiator, even though the union itself was the exclusive bargaining representative of the employees (*id.* at 301–302). Reinforcing its conclusion by reliance upon a textual analysis of the section and its legislative history (*id.* at 302–305), the Court held that Section 302 broadly prohibits payments by employers to individuals who represent employees in their relations with employers, whether or not the individual is the formal bargaining representative, saying that "a narrow construction would frustrate the primary intent of Congress" (*id.* at 305, 307). Again, in *Arroyo* v. *United States*, 359 U.S. 419, the Court accorded its literal meaning to Section 302(c)(5), holding that the transaction involved in that case "was within the precise language" of the subsection (*id.* at 423). We ask for no more in this case. The "broad prohibition" (*United States* v. *Ryan, supra*, 350 U.S. at 305) found in Section 302 should be construed to encompass loans

as well as gifts, since "deliver" and "receive" include loans of money in ordinary parlance.

B. *The purpose and context of Section 302 accord with the literal meaning of its language.*

1. Section 1 of the Labor-Management Relations Act, 1947, declared that it was the purpose and policy of Congress, in order to promote the full flow of commerce, "* * * to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for *preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations* whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare * * *" (emphasis added). One of the major purposes of Congress in the 1947 Act was to prevent employers from tampering with the loyalty of union officials. By "outlaw[ing] all [unauthorized] payments * * * between employer and representative" (*United States* v. *Ryan, supra,* 350 U.S. at 305), Section 302 was designed to protect the integrity of the collective bargaining process by insuring that employers and representatives would deal at arms length. Recognizing that the employee whose rights are fixed by the contract is not physically present at the bargaining table and that he thus is entitled to an extra measure of protection, Congress intended to avoid such obvious dangers to employee rights as bribery of the

sentative (92 Cong. Rec. 4893), extortion by the representative (93 Cong. Rec. 4679), and diversion of welfare funds by representatives to political or personal purposes (93 Cong. Rec. 4678; S. Rep. 105, 80th Cong., 1st Sess., p. 52).

A loan—particularly the loan of a large sum of money at a very low rate of interest—obviously can be just as effective a device for improperly influencing a union official as an unconditional gift. No one doubts but that an outright gift of $500 passing from employer to representative is forbidden by Section 302. *United States* v. *Ryan*, *supra*, 350 U.S. at 300. No more need be shown than the gift itself. It is not necessary to show that the collective bargaining process was actually influenced by the gift—Congress struck at the mere possibility of abuse by outlawing *all* deliveries and *all* receipts of money (apart from those specifically excepted by the statute). A loan of $200,000 by an employer to a representative at an effective interest rate of just over 2% (which is this case (R. 12–13)) creates the very same possibility of abuse as does a gift. If the normal interest rate for unsecured loans at what would be a low rate is 4% (the *stated* rate of interest in this case, *ibid.*), the saving in interest alone amounts to a gift of $4,000 a year. When compared to a gift, this sort of loan tends to engender the very same emotion—gratitude—in the representative; tends to have the same effect—a blurring of the representative's sense of fidelity to the employees—on the bargaining process; and tends to lead to the same evil result—a collective bargaining relationship which is not based on good faith arms

length collective bargaining. The broad language of Section 302 was intended to, and did, cover any delivery or receipt that *might* cause such an abuse. A loan is just as likely to do so as an outright gift.

2. The structure of Section 302 also points toward this interpretation. Subsections (a) and (b) set forth the broad prohibitions already discussed. Exceptions to those prohibitions are set forth in subsection (c). These exemptions are: (1) money paid by an employer to "any representative who is an employee" as compensation for his services as an employee; (2) payments made in satisfaction of a judgment or award, or in settlement of a claim; (3) payments for goods purchased at the prevailing market price in the ordinary course of business; (4) "check-off" payments "in payment of membership dues in a labor organization"; and (5) payments to welfare funds administered jointly by the employers and employees.[2]

These exemptions are extremely detailed and obviously carefully molded to cover only those situations which Congress conceived to be normally free from the possibility of abuse. Thus, money may be paid to settle a claim only in the absence of fraud or duress. Membership dues may be "checked off" only if each individual employee has, in writing, expressly authorized that deduction from his wages; moreover, the authorization must be subject to termination at reasonable intervals. Welfare funds may be paid only

[2] Appellees have not contended, and cannot contend, that the loan of money out of which this prosecution arose comes within any of these exempted classifications.

for specified purposes, to benefit specified groups of persons, subject to specified control, and pursuant to a detailed written plan. It is apparent, therefore, that Congress knew how to draft exceptions to the broad prohibitions of Section 302, that it gave careful consideration to the exceptions it wished to make, and that it enacted those few exceptions it deemed desirable. This is persuasive evidence that, had Congress intended to except loan transactions from the prohibitions against the payment or delivery of money to a representative, it would have specifically done so. See *Benanti* v. *United States*, 355 U.S. 96, 105.

C. *The legislative history shows the intent to prohibit all financial dealings except those specifically authorized.*

The legislative history of Section 302, from its original language in the Case Bill (H.R. 4908, 79th Cong., 2d Sess.) to its final version in the Taft-Hartley Act, affirmatively shows a general Congressional intent to protect the integrity of the collective bargaining process by prohibiting *all* financial dealings and *all* exchanges of money between employers and representatives of their employees, except monetary exchanges falling within the five carefully defined and severely limited exceptions set forth in the section. That history shows that Congress sought to prohibit any representative from receiving money or any thing of value from any employer in a situation where the representative would receive a personal benefit from, or be personally involved in, the transaction.

1. Section 302 had its origin in an amendment to the Case Bill when Senator Byrd proposed from the floor in the 79th Congress. Prior to that time, the only statutory prohibition against financial dealings between employers and representatives was to be found in Section 8(a) of the National Labor Relations Act, 29 U.S.C. (1946 ed.) 158, which made it an unfair labor practice for an employer to contribute financial support to a labor organization. Senator Byrd proposed an amendment forbidding any payment by an employer, or any receipt by a representative, unless the payment was for services as an employee, or was for union dues withheld by the employer under a "check-off" agreement. 92 Cong. Rec. 4809. The Senator explained briefly that the purpose of his amendment was to insure that no funds would be paid by an employer or received by a representative if the representative was to have exclusive control over the fund. 92 Cong. Rec. 4891–4895. Pointing out that his amendment would not forbid the establishment of health and welfare programs subject to joint control, Senator Byrd declared (92 Cong. Rec. 4893):

> With respect to such [interstate] goods, it prohibits the employer to pay, or any representative of any of his employees to collect, or attempt to collect, any money or other thing of value, *for the use of such representative, or in trust or otherwise.* [Emphasis added.]

Senator Pepper, who led the opposition to the amendment, contended that the language was so broad as to forbid contributions to union-sponsored recreational

organizations or functions, such as baseball teams, dances, and picnics.[3] As he read the prohibitory language of the proposed amendment, "[t]hat language forbids *every* type of delivery by employer to employees and *every* type of receipt by employees from employers, except two * * * payment of compensation for services rendered, and * * * the so-called check-off." 92 Cong. Rec. 4895.

Thereafter, the precise language of the proposed amendment was "written in on the floor" of the Senate.[4] Various modifications were adopted to permit payments (and negotiations for payments) for welfare funds subject to joint control. 92 Cong. Rec. 4900, 5040, 5277. As modified, it was still the opinion of the amendment's opponents that the Byrd amendment would forbid all other transactions involving money or valuables—even the granting of a railroad pass—between employers and representatives. 92 Cong. Rec. 5079, 5336–5337. That was precisely what the advocates of the amendment intended. "I assert," said Senator Taft, "that once we permit an agent [representative] to obtain money *for his own use, or for any purpose,* it is affirmatively a dubious practice, an immoral practice, and unless it is used for purposes which are properly defined [by law], it should not be permitted" (emphasis added). 92 Cong. Rec. 5466.

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[3] It was pointed out in rebuttal that such payments were probably already forbidden as unfair labor practices. 92 Cong. Rec. 4899.

[4] Hearings before the Senate Committee on Labor and Public Welfare on the Labor Relations Program, 80th Cong., 1st Sess., p. 12.

The time for a vote on the amendment drew nearer, and this colloquy took place (92 Cong. Rec. 5496–5497):

> Mr. TUNNELL. * * * The Byrd amendment provides as follows:
>
> "It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees * * *."
>
> Does that not prohibit all sorts of contributions?
>
> Mr. PEPPER. Exactly.
>
> * * * * * *
>
> Mr. TUNNELL. * * * [E]verything is prohibited in the Byrd amendment with the exceptions [wages, dues checkoff, and welfare funds] which have been stated?
>
> Mr. PEPPER. The Senator is absolutely correct.

Again and again, as the debate continued, it was observed that the amendment "contains a flat unequivocal and unrestrained prohibition against the payment [or delivery] of any sum of money". 92 Cong. Rec. 5499, 5502, 5516.

The Byrd amendment finally came to a vote and was adopted by the Senate. 92 Cong. Rec. 5521–5522. Then the Case Bill passed. 92 Cong. Rec. 5739. The House accepted the Senate amendments (92 Cong. Rec. 5946), but the President vetoed the bill (92 Cong. Rec. 6674–6678) and it failed to pass over his veto. 92 Cong. Rec. 6678.

2. The following (80th) Congress also undertook to revise the Wagner Act. H.R. 3020, introduced by

Congressman Hartley during the first session, passed the House with a provision (Section 8(a)) continuing the treatment of payments by an employer to a representative as an unfair labor practice, but did not contain any other provision similar to what is now Section 302. 93 Cong. Rec. 3671, H. Rep. 245, 80th Cong., 1st Sess., p. 29.

H.R. 3020 was referred to the Senate Committee on Labor and Public Welfare. At the same time, the Committee considered (among other bills) S. 55, 80th Cong., 1st Sess., which was "a rather extensively revised draft of H.R. 4908, the so-called Case bill [of the 79th Congress]," introduced by Senators Taft, Ball, and Smith. Hearings before the Senate Committee on Labor and Public Welfare on the Labor Relations Program, 80th Cong., 1st Sess., p. 9.[5] Section 201 of this bill (S. 55) was essentially the Byrd amendment of the previous year. During the course of the hearings on the various bills, Senator Pepper called attention to the breadth of the language in Section 201 of S. 55 ("pay or deliver any money or other thing of value to any representative"), saying (1947 Senate Committee Hearings, p. 52):

> * * * I do call attention to the generality of that language and the debate that the chairman will recall we had on the floor, where even the question of contributions to recreation funds and baseball teams and other similar things that are, I suppose, not intended to be prohibited, were discussed.

[5] These hearings, which were lengthy, will be cited hereafter as 1947 Senate Committee Hearings.

The committee chairman, Senator Taft, indicated that he felt that the specific contributions referred to were already forbidden as an unfair labor practice. Then this exchange took place (1947 Senate Committee Hearings, pp. 52–53):

> Senator PEPPER. * * * I just want to make sure that it is the intention of the authors to only safeguard the welfare funds and to prevent extortion and other improper contributions on the part of the employer, but if it is literally intended to mean exactly everything that the words say, I am glad to have that point clarified. I take it that that was intended.
>
> The CHAIRMAN. Yes; it is intended to mean that all the money that the employer pays out is paid out only because it is earned by the employee. * * *
>
> Senator PEPPER. But the language goes so far beyond that. If it [the employer] made available anything of value to any representative of the employees, whether they are organized or not, it would be forbidden. * * *
>
> I am merely calling attention to the fact that I think it goes far beyond the intended restraints of the author.
>
> The CHAIRMAN. No; I don't think it does. I think that is the intent of the provision. * * *.

In short, Senator Taft—who made his remarks in the presence of Senators Ball and Smith, the co-sponsors of S. 55 (*id.*, pp. 50–51, 53–55)—was well aware of the breadth of the prohibitory language used in Section 201 of S. 55. The choice of that language was a considered choice.

Witnesses before the Senate committee noted, and called attention to, the breadth of the proposed statutory language. William Green, at that time head of the American Federation of Labor, pointed out that the language was so sweeping as to outlaw dues "check-off" arrangements (1947 Senate Committee Hearings, pp. 978):

> [The language is] a blanket and sweeping prohibition against contributions or payments of any sort by employers to unions or union representatives followed by an enumeration of certain limited exceptions to the prohibition. These exceptions, however, are so narrow and so limited as to leave open for prosecution a vast number of innocent and customary transactions between employers and unions or union representatives. Among the most important of these customary transactions is the dues checkoff arrangement established through the process of collective bargaining. * * *

Senator Taft responded, "Mr. Green, I agree that the provision may be too broad in this bill on check-off * * *" (*id.*, p. 979). Joseph A. Beirne, President of the National Federation of Telephone Workers, also asked that Section 201 of S. 55 be amended to permit "check-off" arrangements (*id.*, p. 1180), at the same time noting that he read the language as eliminating "any kind of dishonesty, where money would change hands," and that he favored such legislation (*id.*, p. 1182).

After completing its hearings, the Senate committee reported an original bill, S. 1126, to accomplish the same objects as H.R. 3020 (the bill which had passed the House). 93 Cong. Rec. 3613. This

bill did not contain any provision similar to the Byrd amendment of the preceding year. A minority of the committee, including Senators Taft, Ball, Smith, Donnell, and Jenner, filed their "Supplemental Views" in which they stated that the failure of the committee bill to cover employer payments to representatives left a definite evil uncovered. They declared their intention to introduce amendments from the floor of the Senate; one of these was to be a slightly modified version of Section 201 of S. 55. S. Rep. 105, 80th Cong., 1st Sess., pp. 50, 52–53, 56. As promised, Senator Ball introduced Section 302 as an amendment to S. 1126 when the bill was taken up for debate. 93 Cong. Rec. 4677. There it was pointed out by opponents of the section that its prohibitory language was sufficiently broad to forbid "Christmas presents or birthday presents or anything of that type", and every other form of financial transaction not expressly excepted. 93 Cong. Rec. 4748. Nevertheless, the Senate adopted the amendment (93 Cong. Rec. 4754), it was accepted by the conference committee (H. Rep. 510, 80th Cong., 1st Sess., pp. 24–25, 66–67),[6] and it became law as part of the Labor-Management Relations Act, 1947.

From first to last, then, the legislative history shows that Congress was fully aware of the breadth of the language which it used. "Nor can it be contended that in this legislation Congress was aiming solely at the welfare fund problem. Such a suggestion is sup-

[6] Senators Taft and Ball were two of the four Senate members on the conference committee. H. Rep. 510, p. 29.

ported neither by the legislative history nor the structure of the section." *United States* v. *Ryan, supra,* 350 U.S. at 305. Congress knew, and intended, that its language would forbid every sort of financial transaction between employers and representatives not expressly authorized. It knew that Section 302 would prohibit many exchanges of money which would be innocent were it not for the positions occupied by the employer and representative, and condemned those exchanges solely because of the havoc which those exchanges *could* work on the collective bargaining process. In short, Congress deemed each and every unauthorized financial transaction between employers and representatives to be an evil, and forbade all of them. A loan is one of those forbidden exchanges of money.

D. *The district court erred in inferring that Section 302 would not have been amended in 1959 specifically to cover loans if Congress thought that Section 302 as originally enacted in 1947 included loans of money by employers to representatives.*

In 1959, Congress enacted Section 505 of the Labor-Management Reporting and Disclosure Act, *supra,* pp. 2–3, which amended Section 302(a), *supra,* to read, in part, that "[i]t shall be unlawful for any employer * * * or any person * * * who acts in the interest of an employer to pay, lend, or deliver * * * any money or other thing of value—(1) to any representative * * *." Section 302(b), *supra,* was changed to forbid the receipt by a representative of "any payment, loan, or delivery of any money or

other thing of value * * *." The basis for the order dismissing the indictment in the present case was the district court's conclusion that this amendment was intended to broaden Section 302 to reach conduct not already prohibited—in this case, a loan (R. 45). "I reject[1] the argument," said the district judge,

> that the subsequent action and the legislative history upon which that action was predicated by the Congress in 1959 in injecting into the statute the specific words dealing with a loan were intended to broaden that which I take it the Government urges was manifest before. I am, therefore, of the opinion that on the extrinsic evidence offered to be introduced by the Government and its judicial admission the transaction was not an offense contemplated by the statute as it existed at the time [of the loan].

Congress in 1959 was primarily concerned with a totally different problem. The first proposal to add the words "lend" or "loan" to Section 302, *supra*, was contained in Section 607 of S. 3974, 85th Cong., 2d Sess., a bill which was passed by the Senate (104 Cong. Rec. 11487), but not by the House. Section 607 would have amended Section 302(a) so as to make it "unlawful for any employer or any person who acts as a labor relations expert, adviser, or consultant to an employer to pay, lend, or deliver * * * any money or other thing of value" to a representative of the employer's employees. No comparable change was proposed in Section 302(b). The Senate committee

[1] In view of the court's statement, this word should probably be "accept".

report on the bill stated (S. Rep. 1684, 85th Cong., 2d Sess., pp. 43–44) that the purpose of Section 607 was "to forbid any payment or bribe by an employer or anyone acting on his behalf, whether technically an agent or not, and to forbid the receipt of any such bribe by any person, whether an individual, an officer, or employee of a labor organization, or a committee representing employees."[8] To say, as appellees must, that this explanation means that the Senate committee thought that, by its proposed language, it was reaching bribery by way of loan for the first time is fallacious. By the very same reasoning, it can be concluded that the Senate committee thought that it was outlawing bribery accomplished by gift for the first time. The explanation gives as much support for the latter conclusion as for the former. Yet the latter conclusion, in the light of the legislative history of Section 302 and its judicial construction as of 1958, is wholly and concededly without foundation. Thus, it can be said only that the purpose of the proposed amendment was to extend the prohibitions of Section 302 to "middlemen", *i.e.*, individuals who were not themselves employees or employers' agents but dealt with employee representatives on behalf of employers. There is nothing to indicate that, in adding the word "lend", the Senate believed it was expanding the statute to reach payments of a kind not previously covered.

In the next Congress, the Senate Committee on Labor and Public Welfare reported S. 1555, 86th

[8] S. Rep. 1684 refers to Section 608, which became Section 607 in S. 3974 as passed by the Senate.

Cong., 1st Sess. (the Kennedy-Ervin Bill, as amended). Section 111 proposed to amend Section 302(a) in substantially the same way as had Section 607 of S. 3974 in the preceding year. The Senate report (No. 187, 86th Cong., 1st Sess.) which accompanied the committee bill made no specific reference to the addition of the word "lend" to Section 302(a), although the report did discuss the other amendments at some length. For example, after discussing the problem of payments by middlemen, the report said (*id.*, p. 11):

> The committee bill attacks these problems on three fronts.
>
> First, it makes improper payments by management middlemen criminal offenses under section 302 of the Labor-Management Relations Act. *Section 302 already prohibits any payment by an employer to any representative of any of his employers* * * * [unless specifically excepted]. Section 111 of the committee bill would make Section 302 applicable to—[persons acting for employers]. * * *
>
> Second, the committee bill expands section 302 to cover * * * payments * * * [which amount to unfair labor practices].
>
> Third, the committee bill relies upon a system of reporting and disclosure to apply further corrective curbs on improper employer activity. [Emphasis added.]

Later, the committee report noted (*id.*, p. 13):

> Section 111 of the committee bill strengthens section 302 of the Labor-Management Relations Act by making it applicable to all forms of

extortion and bribery in labor-management relations some of which *may* slip through the present law.

Section 302(a) of the Labor-Management Relations Act provides—

"It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce."

Section 302(b) forbids the receipt of such payments. * * *

Although these provisions of existing law would punish most forms of bribery or extortion if they were vigorously enforced by prosecuting officers, the testimony before the McClellan committee revealed *loopholes which both employer representatives and union officials turned to advantage* at the expense of employees. The committee bill proposes to close the loopholes. * * * [Emphasis added.]

Again, it is clear that the committee was aiming primarily at payments by persons acting for employers, and regarded that situation as the "loophole" intended to be closed.

Finally, in its section-by-section analysis of the reported bill, the Senate committee said (S. Rep. 187, *supra*, at p. 43):

Section 111: Amends sections 302 (a), (b), and (c) of the Labor-Management Relations Act, 1947, as amended, primarily for the purpose of clarifying an ambiguity which presently exists. Under present law it is illegal for an employer to pay or deliver anything of value

> to a representative of his employees. The amendments contained in this section would remove any doubt that all forms of bribery and extortion which *might* escape the provisions of existing law would be prohibited under pain of criminal penalties for conviction thereof. *The intent of these amendments to sections 302 (a) and (b) is to forbid any payment or bribe by an employer of anyone who acts in the interest of an employer whether technically an agent or not and to forbid the receipt of any such bribe by any person, whether an individual, an officer or employee of a labor organization or a committee representing employees.* * * * [Emphasis added.]

Once again, the Senate committee made it plain that it was directing its attention to persons acting for employers or labor officials, rather than to any supposed problem concerning loans.

Section 111 of S. 1555 became Section 211 of the Senate bill upon passage. 105 Cong. Rec. 6745. The House Committee on Education and Labor, to which S. 1555 was referred, used the Senate bill as "the basis of [its] work" in preparing the bill which it reported (H.R. 8342, 86th Cong., 1st Sess.), and it accepted all of the Senate's proposed amendments to Section 302. It added associations of employers to the group forbidden to make payments, and changed Section 302(b) of the 1947 Act to reflect the language of Section 302(a), as amended by the Senate. H.R. 8342, 86th Cong., 1st Sess., Section 505; H. Rep. 741, 86th Cong., 1st Sess., p. 77. Nowhere, however, did the committee give any indication that it had specifically considered the question of loans, or that it regarded the new

language as reaching an area (loans) not previously covered. H. Rep. 741, *supra*, pp. 10, 46–47. Although the text of H.R. 8400, 86th Cong., 1st Sess. (the Landrum-Griffin bill) was substituted for the text of H.R. 8342, *supra*, on the floor of the House, this did not work any change in Section 505, which became law in the same form it had as Section 211 of S. 1555, as amended by the House committee. 73 Stat. 537.

Thus, the 86th Congress (and the Senate in the 85th Congress) were primarily concerned with the problem posed by payments made by persons acting in the interest of employers or groups of employers to labor union officials or employees, whatever the technical relationship between the parties. The other changes, such as the addition of the words "lend" and "loan", serve only to make explicit what was already forbidden by Section 302 as amended in 1947. There is no authoritative indication that either House thought that, with respect to loans, the new statute would go beyond the 1947 Act.

2. The district court in its order, and appellees in their motions to affirm, relied on other materials in the legislative history of Section 505 which were believed to point to the construction that the 1959 amendment enlarged Section 302. Particular reliance was placed upon statements made before the Senate Select Committee on Improper Activities in the Labor or Management Field (the McClellan Committee) when it focused its attentions on the activities of appellees. The loan which lies at the root of this prosecution was uncovered, and testimony concerning

it was heard by the committee, beginning on May 13, 1957. Hearings before the Senate Select Committee on Improper Activities in the Labor or Management Field, Part 7, pp. 2197, 2201–2224, 2226–2229, 2252–2253, 2255, 2282.[*] On May 16, 1957, Senator Kennedy undertook to summarize what had been learned about the dealings of appellee Beck. In passing, he touched on this loan, saying, at one point, that "there probably is no law under which they [the employers] could be held liable", and, at another point, "there is no law against it". Select Committee Hearings, Part 7, pp. 2402–2403. These remarks, of course, cannot be read as indicating any fixed opinion either way. Moreover, they should be read in connection with Senator Kennedy's statement three days earlier to the effect that perhaps the committee should recommend limitations on "personal financial dealings" between employers and representatives (*id.*, p. 2253). It is perfectly clear that at least the greater part of such transactions (bribes, gifts, and extortions) were already outlawed, so these remarks should be read only as a suggestion that Congress should make explicit what was already broadly covered. In any case, the McClellan Committee in its interim report (S. Rep. 1417, 85th Cong., 2d Sess.), while it discussed this loan (*id.*, pp. 66–69), did not express the view that the loan was not forbidden by law. It referred to the loan as improper (*id.*, pp. 85–86),

[*] The hearings before, and reports of, this committee will be referred to as "Select Committee Hearings" and "Select Committee Reports".

but did not recommend legislation which in terms would forbid such loans. Rather, the committee confined itself to the "management middlemen" problem (*id.*, p. 452; see *id.*, pp. 450–453).

Appellees also have pointed to a prepared statement submitted by Senator Goldwater at a hearing before the Joint Subcommittee of the House Committee on Education and Labor, where the Senator stated that he regarded Section 211 of S. 1555 as *adding* a prohibition on loans to Section 302 of the Taft-Hartley Act. Hearings before a Joint Subcommittee of the House Committee on Education and Labor, 86th Cong., 1st Sess., on H.R. 3540 and Related Bills, Part 4, pp. 1604, 1627.[10] This can hardly be taken as an expression of the opinion of the Senate or the Senate committees, however, since Senator Goldwater opposed the reporting of S. 1555, and was the only Senator to vote against its passage (*id.*, pp. 1593, 1639). Appellees have also relied upon a statement by Mr. Meany, President of the A.F.L.-C.I.O., which can be read as approving the use of explicit language as to loans, but not as suggesting that such language would cover a new area (*id.*, Part 1, p. 103), and a statement by the United States Chamber of Commerce which is favorable to appellees (Hearings before a Subcommittee on Labor of the Senate Committee on Labor and Public Welfare on Labor-Management Reform Legislation, 86th Cong., 1st Sess., p. 230). Such a private view was not reflected in the various committee reports, however, and is of no moment.

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[10] A revised form of this statement was also printed in the Congressional Record. 105 Cong. Rec. 10094, 10099.

3. Even if it could be said—which it cannot—that in 1959 Congress clearly indicated that it believed that Section 302 as enacted in 1947 was not sufficiently broad to forbid loans, that later expression could not be said to alter the meaning of the 1947 Act. In fact, "such interpretation has very little, if any, significance" in determining the contemporaneous intent of Congress in passing Section 302 in 1947. *Rainwater* v. *United States*, 356 U.S. 590, 593; *Fogarty* v. *United States*, 340 U.S. 8; 13-14; *United States* v. *Mine Workers*, 330 U.S. 258, 281-282; see *Commissioner* v. *Acker*, 361 U.S. 87, 92-93. "We fail to see", said this Court in *Mine Workers, supra,* at p. 282, "how the remarks of these Senators in 1943 can serve to change the legislative intent of Congress expressed in 1932 * * *."

The validity of this line of decisions is shown by the materials cited by the district court and appellees in this case. Heavy reliance is placed upon general remarks by Senator Kennedy in 1957 and on an analysis of the 1959 amendment prepared by Senator Goldwater. Even if Senator Kennedy's statements are taken as supporting appellees' position—which we do not believe that they do—the fact remains that the Senator was not a member of the House of Representatives in 1946 when the Case Bill containing the Byrd amendment came before it. 92 Cong. Rec. 5946. He was a member of the House in 1947, but H.R. 3020 (the Hartley bill) did not contain Section 302 as it

originally passed the House (*supra*, pp. 21–22; see 93 Cong. Rec. 3634–3635, 3671). After the Senate had added Section 302 to its bill (S. 1126) and the Conference Committee had agreed to retain the section in H.R. 3020 (*supra*, p. 25), then Congressman Kennedy voted against agreeing to the conference report (93 Cong. Rec. 6361, 6368, 6392–6393) and later voted to sustain the President's veto of the Taft-Hartley Act. 93 Cong. Rec. 7489. As for Senator Goldwater, he was not a member of Congress at all in 1947. 93 Cong. Rec. 7489, 7538. Thus, their views in 1957 and 1959 would not provide a sound basis for interpretation of the 1947 statute contrary to its language and intent at the time of its enactment.

E. *The 1947 version of Section 302 was sufficiently definite and certain to be the basis of a criminal prosecution.*

In their motions to affirm, appellees offered an alternative contention that the 1947 version of Section 302 is too vague to be read as prohibiting a loan transaction. While the legislative draftsman might have chosen to use a number of words of specific content, rather than broad inclusive words like "pay", "deliver", and "receive", a statute does not become invalid because more specific phraseology is possible. All that is required is that the language "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *United States* v. *Petril-*

lo, 332 U.S. 1, 8. So measured, the language of Section 302 gives fair notice, in well-understood terms, that no payment or delivery of money or other thing of value is permitted unless specifically exempted from the operation of the statute. The section does not require the appellees to make as difficult a choice as that involved in many cases under legislation already upheld by this Court.[11] What

[11] *E.g.*, *Roth* v. *United States*, 354 U.S. 476, 491 (statute forbidding the mailing of material that is "obscene, lewd, lascivious, or filthy * * * or other publication of an indecent character"); *United States* v. *Harriss*, 347 U.S. 612 (statute applicable to anyone who solicits or collects money where the "principal purpose" of the person or the principal purpose of the solicitation or collection is to influence legislation by direct communication with legislators); *United States* v. *Hood*, 343 U.S. 148, 151–152 (statute forbidding sale of influence to obtain "any appointive office or place" held to include appointive offices authorized by Congress but not yet established by the President); *Boyce Motor Lines* v. *United States*, 342 U.S. 337 (regulation requiring the drivers of trucks carrying explosives to avoid "congested" routes "so far as practicable, and, where feasible"); *Dennis* v. *United States*, 341 U.S. 494, 496 (statute forbidding any person to conspire "to knowingly or willfully advocate * * * or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence * * *"); *Kovacs* v. *Cooper*, 336 U.S. 77 (prohibition against "loud and raucous" sound trucks); *United States* v. *Petrillo*, 332 U.S. 1 (statute prohibiting coercion of radio stations to employ persons "in excess of the number of employees needed * * * to perform actual services"); *Screws* v. *United States*, 325 U.S. 91, and *Williams* v. *United States*, 341 U.S. 97 (prohibition against depriving any person "of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States"); *Chaplinsky* v. *New Hampshire*, 315 U.S. 563 ("any offensive, derisive or annoying

was said in *United States* v. *Hood*, 343 U.S. 148, 151–152, has more than superficial applicability here:

> * * * The picture of the unsuspecting influence merchant, steering a careful course between violation of the statute on the one hand and obtaining money by false pretenses on the other by confining himself to the sale of nonexistent but plausible offices, entrapped by the dubieties of this statute, is not one to commend itself to reason.

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word"); *Gorin* v. *United States*, 312 U.S. 19 ("connected with" or "relating to" the national defense); *Old Dearborn Co.* v. *Seagram Corp.*, 299 U.S. 183 (statute exempting fair trade agreements from operation of other laws only if the fair traded article was in "fair and open" competition with other products); *United States* v. *Wurzbach*, 280 U.S. 396 (no officer or employee of the United States may solicit or receive a "contribution for any political purpose whatever" from any other such officer or employee); *Omaechevarria* v. *Idaho*, 246 U.S. 343 (pasturage of sheep forbidden if it would interfere with the "usual and customary" use of a cattle range); and *Nash* v. *United States*, 229 U.S. 373 (statute forbidding "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations").

Nothing in *United States* v. *Mersky*, 361 U.S. 431, is inconsistent with the government's position in this case. In *Mersky*, this Court held that a customs regulation, on its face, left "the distinct impression that it was intended to protect and expedite the collection of customs duties", rather than to change the requirements as to the markings to be affixed to imported goods after importation (*id.*, at 440–441). Here, there is no question but that Section 302 is directed at the regulation of financial dealings between employers and representatives, and thus gave full warning of the general area it covers.

CONCLUSION

For the foregoing reasons, the decision of the district court should be reversed.

Respectfully submitted.

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